

## Faulk, Camilla

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**From:** Aaron Buchanan [Aaron.Buchanan@co.yakima.wa.us]  
**Sent:** Friday, April 29, 2011 4:54 PM  
**To:** Faulk, Camilla  
**Cc:** James Hagarty  
**Subject:** Witness Recording Criminal Court Rule

Dear Ms. Faulk,

Please reject the proposed amendment to CrR 4.11.

Our state maintains a strong regard for the privacy of our citizens. Washington Courts have already determined that a witness decides whether an interview is private or not. To claim that a witness interview is not private is contradictory.

"The decision as to whether the interview be private is neither for the prosecutor nor the defense counsel, but rests with the witness." State v. Hofstetter, 75 Wn.App 390, 399; 878 P.2d 474 (1994) review denied at 125 Wn.2d 1012; 889 P.2d 499.

"[I]t is logical to conclude that a witness may also choose under what conditions he or she is willing to give an interview, including whether it should be recorded." State v. Mankin, 158 Wn. App. 111; 241 P.3d 421.

Federal Courts have determined that a witness's right to refuse to be interviewed coexists equally with a defendant's right to effective assistance of counsel.

"[A] defendant's right of access to a witness 'exists co-equally with the witnesses' right to refuse to say anything." United States v. Rice, 550 F.2d 1364, 1374 (5th Cir.) *cert denied*, 434 U.S. 954, 98 S.Ct. 479, 54 L.Ed.2d 312 (1977).

While an audio recording of an interview is convenient for the prosecution and defense, that convenience does not outweigh a witness's right to privacy as well as their right to refuse. The Court should consider the rights of all citizens when reviewing this rule. All of our citizens deserve the right to due process no less than the accused.

RCW 7.69.010 states "In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a **significant role** in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with **dignity, respect, courtesy, and sensitivity**; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are **honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous** than the protections afforded criminal defendants." (Emphasis added.)

Please reject this proposed rule.

**Aaron Buchanan**

Victim-Witness Manager/Senior Investigator  
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